

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE,

Plaintiff,

v.

MONSANTO COMPANY, *et al.*,

Defendants.

Case No. C16-107-RAJ-MLP

ORDER

This matter comes before the Court on the parties' submission of motions to exclude expert testimony for failure to satisfy *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) (dkt. ## 274, 276, 278, 280, 282, 284, 288, 292, 297, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320) and Plaintiff's submission of motions to strike supplements to Defendants' expert reports (dkt. ## 286, 290). Based on the technical and highly complex nature of the underlying subject matter in this case, the Court previously requested the parties' input on the presentation of a science tutorial for this Court's understanding of the parties' positions to adjudicate the pending *Daubert* and related motions. (Dkt. # 458.) On September 16, 2022, the parties submitted their "Joint Proposal Re: Science Day Tutorial." (Dkt. # 484.)

1 Based on the Court's review of the parties' proposals (dkt. # 484), the Court hereby  
2 ORDERS the following parameters for the science day tutorial:

3 **A. Format, Length of Time, and Presentation**

4 The science day tutorial will take place over the Zoom format on **October 6, 2022, at**  
5 **9:00 a.m.** Each side will be allowed up to **three hours** to present, in a back-and-forth per topic  
6 format. The parties are responsible for allocating how much time they will devote to each topic.

7 The presentations will be given by counsel on behalf of each side. The Court presumes  
8 that, at this stage of the litigation, counsel should have a conveyable understanding behind the  
9 science discussed in their respective experts' reports sufficient to educate the Court.

10 By **October 4, 2022, at 9 a.m.**, the parties shall exchange any draft PowerPoints and/or  
11 demonstrative exhibits they intend to utilize during their respective presentations. By **October 6,**  
12 **2022, at 8 a.m.**, the parties shall exchange their final PowerPoints and/or demonstrative exhibits  
13 and shall submit them to the Court. The Court does not require, nor will the Court accept, any  
14 journal articles, texts, treatises, or other educational materials submitted for its review.

15 As previously noted by this Court's prior Order (dkt. # 458 at 1-2), the Court's science  
16 day tutorial is expected to be informal, will take place off of the record, will remain closed to the  
17 public and to any persons other than the parties, counsel for the parties, and court staff, and will  
18 be recorded over the Zoom format for the Court's use only. Any statements made during the  
19 science tutorial by either party will not be under oath nor binding in any other subsequent  
20 *Daubert* hearings or proceedings in this matter. Because the tutorial will not include the  
21 presentation of evidence, the Federal Rules of Evidence will also not apply.

22 **B. Scope of Topics**

23 The scope of topics to be addressed by the parties' presentations shall be limited to:

1 (1) General Summary of Litigation

2 (2) Polychlorinated Biphenyls (“PCB”) Primer

- 3 a. Such presentation may include information regarding: manufacture and  
4 chemical structure of PCBs; PCB applications and alternatives; PCB  
5 warnings, disposal recommendations, and regulations; PCB persistence,  
6 bioaccumulation, and biomagnification in the food web; by-product PCBs;  
7 and PCB chemical fingerprinting methodology and weathering

8 (3) Lower Duwamish Waterway (“LDW”) and Superfund Sites Overview

- 9 a. Such presentation may include information regarding: the LDW, its  
10 development, investigation, and remediation; superfund sites, the LDW  
11 superfund site and its regulatory processes; source control, and ecological  
12 impacts on the LDW; and how the EPA conducts site analysis and  
13 determines remedies

14 (4) Epidemiology

- 15 a. Such presentation may include information regarding: epidemiology and  
16 the strengths/weaknesses of its studies; and interpretation of studies and  
17 their role in assessing whether a chemical or exposure is capable of  
18 causing human disease

19 (5) Toxicology

- 20 a. Such presentation may include information on: toxicology and the  
21 strengths/weaknesses of its studies; and its use with mechanistic data to  
22 develop conservation health protective doses of PCBs used in EPA risk  
23 assessments (“EPA Reference Doses and Cancer Slope Factor”)

1 (6) Stormwater Systems Overview

- 2 a. Such presentation may include information on: stormwater and wastewater  
3 systems; and the City of Seattle's stormwater system, its impact on the  
4 LDW, and options for keeping it free of contaminants

5 (7) Statistics of Population Estimates/Probabilistic Risk Assessments

- 6 a. Such presentation may include information on: fish consumption rate  
7 calculations and advisories, angling population estimates; and use of EPA  
8 Reference Doses and Cancer Slope Factor to determine human health risks  
9 and their magnitude to evaluate risk

10 Each party is permitted to present on the above-identified topics, but need not present on  
11 every identified topic. Accordingly, the parties are free to allocate as much or as little time to  
12 each of these topics as they wish, with the understanding that the parties' individual  
13 presentations shall not exceed their Court-allotted time.

14 The Clerk is directed to send copies of this Order to the parties and to the Honorable  
15 Richard A. Jones

16 Dated this 21st day of September, 2022.

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18 MICHELLE L. PETERSON  
19 United States Magistrate Judge  
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